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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/651,344	08/29/2000	D. Bruce Modesitt	033297-035	1923

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EXAMINER

WOO, JULIAN W

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/651,344

Applicant(s)

MODESITT ET AL.

Examiner

Julian W. Woo

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 5/31/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 26, 27 and 48-84 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26, 48, 49, 64, 65, 69, 70, 72, and 73 is/are rejected.
- 7) ☒ Claim(s) 27, 50-63, 66-68, 71, and 74-84 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 5, 8, 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 26, 48, 49, 64, and 65 are rejected under 35 U.S.C. 102(b) as being anticipated by Klein et al. (5,527,322). With respect to claims 26, 48, 49, 64, and 65, Klein et al. disclose, in figures 1 and 8-13, a method for suturing a puncture (P) or aperture of a blood vessel (BV), where the method includes inserting a device or the distal end of a probe (14) into a blood vessel at the aperture, advancing a first end of a suture (62) or suture element from the probe through the vessel wall adjacent to the aperture and into the vessel; extending the suture element across the aperture; withdrawing the first end of the suture from the vessel at a vessel wall position opposed from the position of the aforementioned suture advancement and through a bight (see fig. 13) of the suture to form a loop; and tensioning the first and second ends of the suture adjacent the bight to form a knot (see element K in fig. 13, specifically).
3. Claims 69, 70, 72, and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by Klein et al. (5,417,699). Klein et al. disclose, in figures 2 and 7-12, a device (10) with a body (22), at least one suture element (30) held on the body, and means for passing the suture element through a vessel wall adjacent an aperture in the vessel wall or at least one needle (20) on the body. The suture element, as seen in

figures 10-12, spans across the aperture and is positioned to form a loose knot formation (72) between opposed portions of the suture element.

***Allowable Subject Matter***

4. Claims 27, 50-63, 66-68, 71, and 74-84 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record, alone or in combination, discloses a method for suturing a puncture or aperture in a wall of a blood vessel, where the method includes inserting a device or probe through the puncture, moving a suture through the vessel wall on opposed positions adjacent the puncture or aperture, and releasably attaching a bight of the suture to the probe before its insertion through a puncture; and where the suture element has a loop formation on a portion thereof, so that the device passes another portion of the suture element through the loop formation. The prior art of record also does not disclose a device for closing a aperture in the vessel wall, where an elongate foot is deployed from the device within the vessel; where at least two suture elements are held on the device body along with means for passing each element through the vessel wall; and where a needle is arranged to pass a portion of the suture element device through loop formation on another portion of the suture element.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

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**Conclusion**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (703) 308-0421. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached at (703) 308-2496.

General inquiries relating to the status of this application should be directed to the Group receptionist at (703)308-0858. The FAX number is (703)872-9302.



Julian W. Woo  
Patent Examiner

February 26, 2003